



Via Electronic Submission

March 9, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentations – Level 3 Communications
LLC Petition for Forbearance Under 47 U.S.C. §160(c) from
Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1) and Rule 69.5(b),
WC Docket No. 03-266

Dear Ms. Dortch:

Yesterday, Robert Binder on behalf of Citizens, Chris Colwell, Gary Peddicord and Susan Maggard on behalf of Cincinnati Bell Telephone (CBT) and I on behalf of ITTA spoke with John Stanley of Commissioner Abernathy's staff, Jessica Rosenworcel of Commissioner Copps' staff and Scott Bergmann of Commissioner Adelstein's staff regarding the above-captioned proceeding.

We collectively raised concerns on behalf of midsize carriers with each of the offices regarding the serious impact that granting of the Level 3 forbearance petition would have on midsize carriers' access revenues and, consequently, on their ability to invest in, maintain and upgrade their networks. The midsize carrier representatives pointed out the size disparity between midsize and large carriers (see attached.) They noted that the per-end user impact of any access reductions or investment to enable differentiating VoIP traffic for midsize carriers would likely be many multiples of the per-end user impact for the largest carriers.

Far from resolving the current problems with the current intercarrier compensation regime, granting the Level 3 petition would only further exacerbate them. Were the Commission to meet the needs of one carrier or type of carriers without factoring in the impact on all other affected carriers, and ultimately on end users, it would only

Ms. Marlene H. Dortch
March 9, 2005
Page Two

open up new opportunities for arbitrage that would further destabilize the access charge system in place today.

Granting this petition would create a strong incentive for traditional long distance carriers to disguise their TDM traffic as IP traffic to qualify for the near 90% reduction in access rates Level 3 has requested. Therefore, any estimates of the economic impact of granting the Level 3 petition should not be limited simply to the estimated growth of VoIP users, as dramatic as this growth is likely to be, but should anticipate the erosion of virtually all access revenues, including special access revenues, over a relatively brief period of time.

We further noted there are recent precedents suggesting how quickly such arbitrage can have an effect. For example, CBT representatives explained that prior to the Commission's recent decision on the Core Communications forbearance petition, which removed the growth caps and new-to-the-market rule, CBT's reciprocal compensation revenue and expense were relatively balanced. However, the Core Communications Order, if upheld, will immediately increase CBT's reciprocal compensation expense by over 30%, , with the entire \$1.2 million annual increase going to Level 3.

Granting the Level 3 petition would also have distinctly negative process implications. It would have the immediate effect of disincenting Level 3's and other VoIP providers' participation in the broader industry-wide discussions of intercarrier compensation reform that are currently underway in the context of the Commission's recently released Further NPRM. Conversely, denying the petition would give added incentive to all parties to do the hard work of achieving a comprehensive, forward-looking solution.

We also noted that the Level 3 petition gave virtually no consideration to the legitimate cost recovery issues that guided the Commission in its reform of access charges in the context of the CALLS and MAG proceedings. The Cincinnati Bell representatives noted, for example, the fact that the \$0.0007 reciprocal compensation rate proposed by Level 3 in its forbearance petition would represent only a fraction of the artificially low TELRIC rates set via the state arbitration process in Ohio and Kentucky, which rates failed to include, *inter alia*, realistic forward-looking estimates of the cost of capital and the cost of depreciation. The impact of such reductions would be dramatic on all midsize carriers' operations.

We also noted that Level 3 fails to offer any credible suggestion as to how IP-PSTN traffic could be identified and accounted for. Audits of traffic are practically infeasible for most midsize carriers since they would require financial and staffing resources that are generally well beyond those that are typically available to midsize carriers.

Ms. Marlene H. Dortch
March 9, 2005
Page Three

Finally, we noted that the Level 3 petition fails to account for any implicit subsidy that may be embedded within current access rates and fails to identify any alternative explicit cost recovery mechanisms, as mandated by the Telecommunications Act.

In accordance with Section 1.1206(b)(2) of the Commission's rule, this letter is being filed electronically with your office.

Please feel free to contact me if you have any questions.

Sincerely,

/s/ David W. Zesiger
Executive Director

cc: John Stanley
Jessica Rosenworcel
Scott Bergmann